IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2292 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJNIKANT DESAIBHAI PATEL & 2 - Petitioner(s)
Versus
COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR & 2 - Respondent(s)

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Appearance :
MR PM BHATT for Petitioner(s) : 1 - 3.MR MC BHATT for Petitioner(s) : 2,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 28/02/2007

ORAL JUDGMENT

1. The short facts of the case are that on account of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “the Act”), two forms were filed for various agricultural lands by the petitioner No.1 i.e. Rajnikant Desaibhai Patel being No.2150 and the form being No.2147 by petitioner No.2 i.e. Parvatiben Desaibhai Patel. There is no dispute that in the form of Parvatiben Desaibhai Patel, the land bearing Survey No.699 (which is the land in question for which the claim is raised by the Government), was shown as holding by Parvatiben Desaibhai Patel, whereas in the form of Rajnikant Desaibhai Patel – petitioner No.1 herein various agricultural lands and the house property were shown, but the land bearing Survey No.699 was not shown as the holding. The form of Parvatiben Desaibhai Patel, which was filed under Section 6(1) came to be processed and ultimately, since the exemption was granted by the State Government under Section 20 of the Act to various agricultural lands, including for the land bearing Survey No.699, the decision was

taken by the competent authority that petitioner No.2 – Parvatiben Desaibhai Patel is not holding any excess land. The said decision of the competent authority in the form filed by petitioner No.2 is not challenged by respondent authority before any higher forum, nor the matter is taken up in review under Section 34 of the Act and the said aspect is not in dispute. Consequently, the decision as prevailing on the date when the competent authority decided the form of Parvatiben Desaibhai Patel and as prevailing on the date of the petition and prevailing now is that the decision of the competent authority in the form of Parvatiben Desaibhai Patel declaring no excess land is in operation.

2. However, it appears that in the form filed by Rajnikant Desaibhai Patel – petitioner No.1 herein, the competent authority in the draft statement did not include the land bearing Survey No.699 since it was not shown by the petitioner No.1 in his form, but during the course of the hearing, as per the respondent

authority, since the copy of the extract of Village No.8A was produced and in the said extract land bearing Survey No.699 was also shown as held by the legal heirs of Desai Jeevabhai Patel, the competent authority while taking decision under Section 8(4) of the Act, included the land bearing Survey No.699. It recorded that on 21.6.1976, Desai Jeevabhai Patel had expired and, therefore, the said land bearing Survey No.699 admeasuring 4047 sq. mtrs was included in the holding of the petitioner No.1 Rajnikant Desaibhai Patel together with the house properties over the land admeasuring 197 sq. mtrs., out of which the competent authority declared the property of the house and the land admeasuring 1303 sq. mtrs bearing Survey No.699 as the retainable land and the remaining land bearing Survey No.2744 of Survey No.699 was declared as excess land. The aforesaid decision was taken by the competent authority in the form filed by Rajnikant Desaibhai Patel on 26.6.1986. It appears that thereafter the proceedings were taken further by the competent authority in

pursuance of the decision dated 26.6.1986 in the form of Rajnikant Desaibhai Patel – petitioner No.1 herein, under Section 10(1) onwards upto Section 10(5) and as per the respondent authority, the land bearing Survey No.699 admeasuring 2744 sq. mtrs., which was declared as the excess land vested in the Government and even the possession was taken over by the respondent authority from Rajnikant Desaibhai Patel – petitioner No.1, who as per the respondent authority, voluntarily handed over the possession of the said land. It appears that the petitioner No.1 thereafter did not challenge the order of the competent authority, but petitioners No.2 and 3 herein after a period of about more than three years preferred appeal being Appeal No.81 of 1989 before Urban Land Tribunal under Section 33 of the Act. The said appeal vide order dated 30.8.1994 came to be dismissed by the Urban Land Tribunal on the ground that no evidence was produced by the appellant therein for exemption of the land bearing Survey No.699 and the land in question

has already been vested in the Government and the possession is also taken over and the order for compensation is also passed and the matter was also taken in review by the State Government under Section 34 of the Act and, therefore, the order passed by the competent authority did not deserve to be interfered with. It is under these circumstances, the present petition.

3. Heard Mr.Bhatt, learned Counsel for the petitioners and Mr.Chhaya, learned AGP for the respondents.

4. It may also be recorded that with the consent of the learned Counsel appearing for both the sides and as the petition was also arising from the record of the lower authority, the original file was called for with a view to see that the documents, which were before the authority can be examined by the Court and the documents, which are produced by the petitioners by way of amendment can also be ascertained. It may also be recorded that pending the petition, the Urban Land (Ceiling and Regulation) Repeal Act, 1999

has come into force and by virtue of the said Repeal Act, the proceedings under the ULC Act may abate if the land has not vested in the State Government under Section 10(3) of the Act and the possession is not taken over. In the present case, it is an admitted position that the land, pursuant to the order passed by the competent authority in the form filed by the petitioner No.1, has vested to the State Government by virtue of the notification under Section 10(3) of the Act and the possession is also taken over. Therefore, the present case is not such, which would be covered by the provisions of the Repeal Act to the extent of so far as the abatement of the proceedings under the Act are concerned. As per the decision of the Division Bench of this Court in case of **"Rameshchandra Shamjibhai Raniga v. State of Gujarat and Ors.", reported in 2000(4) GLR, 1**, notwithstanding the Repeal Act, if the action is taken by the authority under the Act or in purported exercise of the power under the Act for declaration of the land as excess land or

the vesting thereafter, the writ petition preferred before this Court would not abate and, therefore, the matter can still be examined by this Court for testing the legality and validity of the action of the respondent authority under the Act in exercise of the jurisdiction conferred with this Court under Article 226 or 227 of the Constitution of India. Therefore, the matter is to be examined by this Court on the basis of the law prevailing then, in other words, the Act and if the action under the Act is found as legal, no interference may be called for and if the action is found as illegal or ultra vires to the powers under the Act, appropriate relief will have to be considered.

5. On factual aspects, it appears that there is no dispute on the following points:

(a) The petitioner Nos.1 and 2 filed two separate forms under Section 6 of the Act being Nos.2150 and 2147.

(b) In form filed by petitioner No.1, the holding shown of the agricultural land was bearing Survey No.697 at Village Ankodia,

bearing Survey No.327 and No.328 at Village Gotri and the land bearing Survey No.699 at Village Ankodia was not shown as holding by the petitioner No.1.

(c) In the form filed by petitioner No.2, various agricultural lands were shown at Village Gotri bearing Survey No.325, 327 and 328 and at Village Ankodia, bearing Survey No.699 (land in question), No.135/2, 137, 345, 346, 202/1, 331, 670 and 799/2.

(d) On 2.2.1983 the decision was taken by the competent authority in case of the form filed by petitioner No.2 under Section 8 of the Act, observing that the exemption has been granted by the State Government under Section 20 of the Act vide order dated 4.4.1981 qua all the lands since they are agricultural land and are used for agricultural purposes so far as they relate to the lands situated at Village Gotri bearing Survey Nos.325, 327 and 328 and at Village Ankodia bearing Survey No.699. The original order for exemption granted by the State Government is also in the file of the competent

authority and on the said aspects, there is no dispute. So far as the other lands situated at Village Ankodia are concerned, they were falling in the agricultural zone and, therefore, ultimately the order dated 2.3.1983 was passed by the competent authority, whereby in the form filed by Parvatiben Desaibhai Patel – petitioner No.2 herein it was found that as the lands held by the declarant are in agricultural zone and for other lands, the exemption has been granted and as the exemption remained in operation, no land is required to be declared as excess land and consequently the form of Parvatiben Desaibhai Patel was disposed of by the competent authority, declaring that there is no excess land with petitioner No.2.

(e) As a consequence of the aforesaid order, the land bearing Survey No.699 in the form filed by Parvatiben Desaibhai Patel and held by Parvatiben Desaibhai Patel was not declared as excess under the Act.

(f) It is not the case of the State Government

that the exemption granted for the land bearing Survey No.699 by the State Government in favour of Parvatiben Desaibhai Patel was cancelled by the State Government subsequently. However, it appears from the perusal of the order dated 4.4.1981 of the State Government for grant of exemption under Section 20 that the exemption was granted in favour of the following persons:-

(i) Rajnikant Desaibhai Patel

(ii) Dineshbhai Desaibhai Patel

(iii) Hansaben Desaibhai Patel

(iv) Lilaben Desaibhai Patel

(v) Pushpaben Desaibhai Patel

(vi) Ilaben Desaibhai Patel

(vii) Sheelaben Desaibhai Patel

(viii) Parvatiben (Widow of Jeevabhai Desaibhai Patel).

(g) In the form filed by petitioner No.1, Rajnikant Desaibhai Patel, the land bearing Survey No.699 of Village Ankodia was not shown as land held by Rajnikant Desaibhai Patel. The draft statement was issued by the competent authority based on the form filed by Rajnikant

Desaibhai Patel. However, in the said draft statement, the land bearing Survey No.699 was not included for the purpose of computation. It is only at the time when Rajnikant appeared in response to the draft statement and the copy of the Village Form No.8A was produced and in which there was reference to the land bearing Survey No.699, the competent authority included the said land bearing Survey No.699 as held by Rajnikant and decided the matter as if the whole area admeasuring 4047 sq. mtrs. of Survey No.699 is held by the petitioner No.1, Rajnikant. Thereafter, the competent authority, as recorded hereinabove, permitted retainable property of the house on the land admeasuring 197 sq. mtrs., at Ankodia and out of the other agricultural lands bearing Survey No.699 admeasuring 4047 sq. mtrs., the area of 1303 sq. mtrs. was declared as the retainable land by the petitioner No.1, Rajnikant and the area of 2744 sq. mtrs., was declared as excess land to be acquired by the Government.

(h) Even as per the Government if the form of

Parvatiben Desaibhai Patel and the order passed therein by the competent authority dated 2.2.1983 is considered with the order dated 26.6.1986 in the form filed by Rajnikant, petitioner No.1 herein read with the exemption order passed by the State Government, it is apparent that the land bearing Survey No.699 was held by eight persons, including of the petitioners namely; petitioner No.1 Rajnikant, petitioner No.2 Parvatiben (Widow), petitioner No.3 Dineshbhai Desai and other legal heirs of deceased Desai Jeevabhai Patel, whose names are mentioned and referred to hereinabove. In all, there were eight co-sharers of the property of Desaibhai Jeevabhai Patel.

(i) On the appointed day, the land bearing Survey No.699 as such was held by Desaibhai Jeevabhai Patel and as such it was required for him to file the form for the land bearing Survey No.699. However, the fact remained that the said Desaibhai Jeevabhai Patel did not file any form for the land bearing Survey No.699 and Parvatiben, widow of Desai Jeevabhai, possibly

after the death of Desaibhai Jeevabhai on 21.6.1976 filed form for the land bearing Survey No.699 stated that the land is in the name of hear husband, but there was share in the land of his brother Patelbhai Lalbhai Jeevabhai. There are certain infirmities in the decision taken by the competent authority in the form filed by Parvatiben, however, the said order was passed in 1983 and no appeal was preferred or the matter was not taken in review by the State Government at the relevant point of time and, therefore, the order in favour of Parvatiben, which was passed in 1983 qua the land bearing Survey No.699 operated for all time including at the time when the Repeal Act came into force and as a consequence of the said order, the land bearing Survey No.699 so far as the portion held by Parvatiben was not declared as excess land and it remained as exempted land under Section 20 of the Act.

(j) Rajnikant, petitioner No.1 herein did not challenge the order of the competent authority in respect of his form and the appeal was

preferred after a period of three years by Parvatiben being widow of Desaibhai Jeevabhai Patel and Dineshbhai Desaibhai Patel, petitioner No.3 herein and the said appeal is dismissed.

(k) Prior to the appeal preferred by Parvatiben before the Urban Land Tribunal pursuant to the order passed by the competent authority in the form of Rajnikant, notifications under Section 10(1) of the Act onwards were issued and the land bearing Survey No.699 has vested in the Government and the possession is also taken over and voluntarily handed over by Rajnikant, petitioner No.1 herein.

6. If the legality and validity of the order passed by the appellate Tribunal is to be examined, it appears that the appellate Tribunal has rightly observed that if the power under Section 34 of the Act of review is exercised by the State Government the appellate Tribunal may not exercise the power under Section 33 of the Act. The appellate Tribunal has in the impugned order mentioned that the State Government had

exercised the power and vide order dated 24.2.1988, the order of the competent authority is confirmed. The learned AGP is not in a position to show that the order dated 24.2.1988 under Section 34 of the Act was passed by the State Government after giving opportunity of hearing to the persons concerned. The perusal of the order dated 24.2.1988 for the alleged review in the file of competent authority shows that the same is a cyclostyled order, confirming the order of the competent authority and in the said order, nowhere it has been mentioned that the opportunity of hearing or notice was given and the review case was decided. As such, the order dated 24.2.1988 is passed by Additional Collector, Review Unit, Gandhinagar appears as if reviewing the order passed by the competent authority in routine and, that too, ex-parte. The order is neither showing any adjudication, nor any prior hearing and is a cyclostyled communication for intimating that the papers were returned after review and further actions might be taken. Therefore, if the State has

exercised the review power ex-parte under Section 34 of the Act, for which the petitioner or the holder of the land was not put to notice at any point of time, then, such an order cannot be read as operating bar upon the power of the Urban Land Tribunal, to hear and decide the appeal on merits under Section 34 of the Act.

7. Mr Bhatt, learned counsel for the petitioners submitted that as per the material on record, the exemption application under Section 20 of the Act was considered and exemption was granted. However, copy of the exemption order was not produced in the case of petitioner No.1 Rajnikant Patel. He alternatively submitted that even if the application was pending, as per the decision of this Court in the case of ***M/s. Avanti Organisation V. Competent Authority & Additional Collector, Urban Land Ceiling Act, Rajkot & Anr. reported at 1989(1) GLR 586,*** the proceedings even in the case of Rajnikant could not have proceeded further for final declaration under Section 8(4) of the Act. He fairly submitted that thereafter, the Apex Court in the

case of ***Smt. Darothi Clare Parreira & Ors. V. State of Maharashtra & Ors. reported at AIR 1996 SC 2553,*** has taken the view that the competent authority need not wait till the outcome of the application under Section 20 of the Act.

8. As such, in view of the subsequent decision of the Apex Court, the decision of the full bench would not hold the field and the said aspect is also subsequently considered by this Court in the case of ***Indequip Engineering Ltd. & Anr. Vs. Urban Land Tribunal & Ex-officio Additional Chief & Ors. reported at 2006(1) GLR 215.*** Therefore, the contention raised by the learned counsel for the petitioners that the competent authority ought to have waited until the outcome of the decision under Section 20 of the Act for exemption, once brought to his notice cannot be accepted and deserves to be rejected. Even otherwise also, the said aspects would not assume much importance in view of the fact that as recorded hereinabove, the exemption was granted qua the land bearing Survey No. 699, which has been referred to in the decision taken

by the competent authority in the form filed by Parvatiben, petitioner No.2 herein.

9. It appears that so far as petitioner No.1 Rajnikant is concerned, he cannot be heard to challenge the order of the competent authority since he himself not only accepted the order, but has voluntarily handed over the possession and he was not even appellant before the Urban Land Tribunal. Therefore, so far as the challenge made by the petitioner No.1 is concerned, the same even otherwise also cannot be maintained and is barred by acquiescence and having accepted the order and having acted upon the order passed by the competent authority. The reference may be made to the decision of this Court in the case of **State of Gujarat & Anr. Vs. Natverlal Mahjibhai Patel & Anr dated 14-15.02.2007.**

10. However, the aforesaid will not be the situation qua the petitioner No.2 Parvatiben and petitioner No.3 Dineshbhai. If the matter is to be considered for inclusion of the land bearing Survey No. 699, may be in the form filed by

Rajnikant, petitioner No.1 herein, the fact remained that such land was not included in the draft statement and only at the time when the matter came to be considered at the time of hearing, the land bearing Survey No. 699 was included. The competent authority in the order passed in the form filed by Rajnikant, has observed that there were other co-owners on account of the death of deceased Desaibhai Jivabhai. Therefore, if the whole area of the land admeasuring 4047 bearing Survey No. 699 was to be included for the purpose of computation under the Act, may be in the form of Rajnikant petitioner No.1, it was required for the competent authority to give opportunity to the other co-owner of the property, which will include the opportunity to submit objections by Parvatiben, respondent No.2 herein and Dineshbhai, petitioner No.3 herein. It is an admitted position that no opportunity of hearing whatsoever was given to the petitioner Nos. 2 & 3 and therefore, the order of the competent authority so far it relates to the shares of

petitioner Nos. 2 & 3 in the land in question are concerned, would be rendered without following the mandatory procedure, as per Rule 5 of the Urban Land(Ceiling and Regulations), Rules, 1976, which expressly provides for serving of the draft statement to the holder of the vacant land and all other persons so far as may be known who have or are likely to have any claim to or interest in the ownership, or possession, or both of the vacant land. Even as per the decision of this Court in the case of **Chunilal Chhaganlal Pandya (Decd.) through his heirs Manglaben Chunilal Pandya & Ors. V. Competent Authority & Dy. Collector, Rajkot & Anr. reported at 1992(2) GLR 861,** and more particularly, the observations made at para 4 & 5, that if the competent authority is to include the other land which are not included in the draft statement, the opportunity of hearing is required to be given to the concerned party. It is an admitted position that no opportunity of hearing was given to the petitioner Nos. 2 & 3 by the competent authority for inclusion of the

land bearing Survey No. 699 even qua and to the extent of the share or the rights of petitioner Nos. 2 & 3. Therefore, the only inevitable conclusion is that the order of the competent authority at the most can be maintained qua the share of petitioner No.1 Rajnikant, but cannot be maintained qua the share of petitioner Nos. 2 & 3.

11. If the order of the Appellate Tribunal is considered in light of the aforesaid observations, it appears that the appellate Tribunal misdirected itself while dealing with the said contention and has observed that the land is included in the holding of the deceased Desaibhai, who purchased the land and at the time when the Act came into force, Shri Desaibhai was alive and as was his self acquired property, one unit is given, therefore the objection cannot be sustained. As recorded earlier, Shri Desaibhai did not file any form for his holding of the land bearing Survey No. 699 and on his behalf, Parvatiben had filed the form. However, in the form of Parvatiben, it

was ultimately concluded by the competent authority that there is no surplus land on account of the exemption granted even qua land bearing Survey No. 699. Therefore, it was required for the appellate tribunal to examine as to whether the opportunity was required to be given to all the sharers of the property of Desaibhai in land Bearing Survey No. 699, if such land was to be included for the purpose of computation in the form filed of petitioner No.1 Rajnikant and instead of considering the said aspects, the Tribunal has misdirected itself on a different consideration and therefore, there is a clear non-application of mind on the face of the record by the Tribunal. Further, as observed earlier, if such contention is to be considered on behalf of the petitioner Nos. 2 & 3, who were appellants before the Tribunal, since it is an admitted position that no opportunity of hearing has been given to petitioner Nos. 2 & 3 by the competent authority while finalising the form filed by petitioner No.1 Rajnikant, the order of the competent

authority under Section 8(4) cannot be maintained to the extent of share in the land by the petitioner Nos. 2 & 3.

12.The learned AGP attempted to submit that as the excess land had vested to the Government and the proceedings came to be concluded upto Section 10(5) including that of by taking over the possession, the appellate Tribunal has rightly rejected the appeal. Had such contention been in case of the land which is solely held by petitioner No.1 Rajnikant, possibly, it may require some consideration. As observed earlier, so far as petitioner No.1 Rajnikant is concerned, he neither challenged nor can be heard to challenge the order passed by the competent authority on having acted upon the order. However, such will not be the situation for petitioner Nos. 2 & 3 who preferred the appeal before the Tribunal and thereafter, petition before this Court.

13.Any action by the petitioner No.1 Rajnikant at the most may bind the petitioner No.1 Rajnikant

himself and it cannot and would not bind qua the land or interest or share in the land held by petitioner No.2 Parvatiben or petitioner No.3 Dineshbhai, since they were not at all heard nor any opportunity was given by the competent authority while passing the order under Section 8(4) of the Act. Therefore, if the person who is not authorised or another co-owner of the property has accepted the order, who in the present case is petitioner No.1, it would not frustrate the right of the remaining co-owner who were not at all given opportunity of hearing or were not heard for maintenance of the appeal preferred by them against the order of the competent authority qua their shares too. Therefore, the observation made by the Tribunal that as the proceedings are completed under Section 10(3) and 10(5) of the Act for the land in question and hence, the appeal cannot be maintained qua the share of the petitioner Nos. 2 & 3 is ex facie error of jurisdiction in exercise of the appellate power by the Tribunal. Therefore, the order passed by the Tribunal

deserves to be quashed to that extent.

14. In view of the aforesaid, it appears that qua the challenge made by the petitioner No.1 Rajnikant to the order passed by the competent authority and/or by the Tribunal is concerned, no relief can be granted. But such would be the situation to the extent of the share of Rajnikant, petitioner No.1 herein in the land bearing Survey No. 699. If his share is to be considered for the purpose of computation under the Act, as such, the competent authority has observed that there are 8 sharers of the property and consequently, 1/8th share of Rajnikant would be approximately 508 sq. mtr. of the land bearing Survey No. 699. If the matter is considered on the basis that other co-owner or sharer of the property being petitioner Nos. 2 & 3 have not challenged and there are only three sharers of the property admeasuring 4047 sq. mtr. bearing Survey No. 699, its 1/3rd of the share would be around 1313 sq. mtr. If the matter is considered in either way, together with the inclusion of the area admeasuring 197

sq. mtr., over which the house of the petitioner No.1 Rajnikant is situated, the total holding based on 1/8th share would be in any case less than the limit prescribed of 1500 sq. mtrs. and consequently, no excess land would be required to be declared as per the Act. If the 1/3rd share is considered, then the holding would be 1510 sq. mtr. as against the retainable limit of 1500 sq. mtrs. and therefore, only approximatley about 10 sq. mtrs. of the land would be declared as surplus, which also, in any case, is less than 10% of the retainable land. In view of the findings recorded by the competent authority of 8 sharers, the calculation on the basis of 1/8th share even if maintained, no land would be required to be declared as excess.

15. However, so far as other co-sharers of the land bearing Survey No.699 are concerned, it is an admitted position that they including the petitioner Nos. 2 & 3 herein are not given any opportunity of hearing and therefore, the declaration to the extent of their share is without following the mandatory procedure and

therefore, nullity in the eye of law. Not only that, but in the form filed by Parvatiben, the total area admeasuring 4047 sq. mtr. is treated as exempted and the land bearing Survey No. 699 is not at all declared as excess land and the said decision has operated throughout, even when the Repeal Act came into force.

16. Under the above circumstances, considering the matter in either way, the declaration made by the competent authority for the land admeasuring 2744 sq. mtr. as excess land bearing Survey No. 699 cannot be maintained in the eye of law. If the main order under Section 8(4) of the Act issued by the competent authority for declaration of the land as excess land admeasuring 2744 sq. mtrs. bearing Survey No. 699, is illegal and without following the mandatory procedure, all consequential actions taken by the competent authority ex parte from the stage of Section 10(1) to Section 10(5) without giving any intimation or opportunity to petitioner Nos. 2 or 3, would be rendered illegal. If the action of taking away the

property of the citizen by the Government under the Act is found to be without there being any authority under the law or ultra vires on account of non-observance of the principles of natural justice or on account of the non-following of the mandatory procedure, as required under the statute, the action cannot be maintained. The reference may be made to the decision of this Court in the case of **Bharatkumar Lalbhai Vasa & Ors. & State of Gujarat & Ors. in Special Civil Application No. 5324 of 1995 dated 09.11.2006**, in which the Court has relied upon the observations of the Apex Court in the case of **State of Maharashtra and Anr. vs. B.E. Billimoria and Ors., reported at 2003(7) SCC, 336,** whereby the provisions of the Act are held to be ex-proprietary and are required to be strictly construed.

17. In view of the aforesaid observations and discussions, the impugned order (Annexure-A) and its confirmation thereof by the Urban Land Tribunal are quashed and set aside so far as the share of the petitioner Nos. 2 & 3 are

concerned. So far as the petitioner No.1 is concerned, no relief is granted. However, it is clarified that in view of the aforesaid observations made and findings recorded herinabove, even if the order passed against the petitioner No.1 is maintained to the extent of his share, no excess land was held by him which can be declared as excess land by the Government for acquisition under the Act prevailing then.

18. The petition is partly allowed to the aforesaid extent only. Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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